



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
MARCIA OUTTEN,	)	
	)	
Complainant,	)	
	)	Charge No.: 2000CF1348
and	)	EEOC No.: 21BA00667
	)	ALS No.: 11609
UNIVERSAL FAMILY	)	
CONNECTION, INC.,	)	
	)	
Respondent.	)	

**RECOMMENDED ORDER AND DECISION**

On March 7, 2000, Complainant, Marcia Outten, filed a charge of discrimination with the Illinois Department of Human Rights (IDHR) against Respondent, Universal Family Connection, Inc. That charge alleged that Respondent discriminated against Complainant on the basis of mental handicaps when it discharged her.

Although Respondent filed a written response to Complainant's charge, it refused to file a verification to that response as the IDHR demanded. As a result, the IDHR found Respondent to be in default and filed a Petition for Default Order and Complaint for Damages with the Illinois Human Rights Commission. The Commission granted the IDHR's motion and ordered a hearing on damages. That hearing was held on October 12, 2001.

Subsequent to the hearing, the parties filed briefs in

support of their respective positions. In addition, Complainant filed a petition for attorney's fees. The matter is ready for decision.

#### FINDINGS OF FACT

The following findings of fact were derived from the record file in this case and from the evidence presented at the damages hearing.

1. Respondent discharged Complainant effective July 27, 1999.

2. At the time of her discharge, Complainant was earning \$1,200.00 twice a month.

3. Complainant did not find a job after her discharge until the first week of 2000. At that time, she obtained a job with the Illinois Appellate Court. Her starting salary was \$19,000.00 per year.

4. Beginning in January of 2001, Complainant was earning \$1,672.00 per month with the Appellate Court.

5. Complainant was unable to work from July 27, 1999 to August 30, 1999.

6. If Complainant had not been discharged, she would have been entitled to an annuity. The cash surrender value of that annuity is \$4,247.61.

7. Because of the stress resulting from her discharge, Complainant was so upset that she did not leave her house for months. That amount of stress was greater than that normally

experienced by someone who is discriminatorily discharged.

8. An award of \$15,000.00 would be reasonable compensation for the emotional distress Complainant experienced due to her discharge.

9. Complainant has requested compensation for the work of attorney Gregory E. Kulis at the rate of \$200.00 per hour for 13.6 hours.

10. Complainant has requested compensation for the work of attorney Kathleen Coyne Ropka at the rate of \$175.00 per hour for 4.3 hours.

11. The hourly rates and number of hours requested are reasonable and should be accepted.

#### CONCLUSIONS OF LAW

1. Ambiguities in damage calculations are resolved against the discriminating employer.

2. Complainant cannot receive backpay damages for periods of time during which she could not work.

#### DISCUSSION

Respondent spends much of its brief trying to establish that Complainant either is not handicapped under the Human Rights Act or that she failed to establish a *prima facie* case of handicap discrimination. Those arguments are moot in this case. On July 11, 2001, a panel of the Human Rights Commission entered an order of default against Respondent. As a result, there are no liability issues to address. Only damages issues remain to be

determined.

Equally unavailing is Respondent's argument that there was no properly drafted complaint with a formal prayer for relief. Respondent's argument is based upon the requirements for complaints filed in the Circuit Court. It is well-settled law that administrative charges do not require the same details as pleadings in a court of record. ***Scott v. Dep't of Commerce & Community Affairs***, 84 Ill.2d 42, 416 N.E.2d 1082 (1981). Thus, Respondent's arguments regarding the sufficiency of the pleadings must be rejected.

A prevailing complainant is presumptively entitled to reinstatement to the job lost because of unlawful discrimination. In the instant case, however, Complainant did not request such relief. She may well be more satisfied with her current employment than she was with Respondent. In any event, because of her failure specifically to request reinstatement, reinstatement is not recommended.

Complainant is entitled to an award of backpay. The parties disagree on the evidence regarding Complainant's earnings, but those disagreements are not fatal to an appropriate award.

In her briefs, Complainant asserts that her salary with Respondent was \$24,623.00 per year. That assertion cannot be accepted. The question that contained that amount was the subject of a successful objection. As a result, that specific figure is not properly in the record.

There is, however, evidence of Complainant's earnings with Respondent. She testified that she earned \$1,200.00 twice a month. On cross-examination, Complainant became confused about whether bi-weekly meant twice a week or every other week, but that confusion is not enough to disregard her earlier, clearer testimony. Under Commission case law, it is clear that ambiguities involving backpay amounts should be resolved against the discriminating employer. **Clark v. Human Rights Commission**, 141 Ill. App. 3d 178, 490 N.E.2d (1st Dist. 1986). Besides, Respondent appeared at the damages hearing and presented evidence. If Complainant's figure was far from the mark, it should have been a simple matter to produce evidence from Respondent's payroll records. Therefore, the figure of \$1,200.00 twice a month (or \$2,400.00 per month) is accepted as Complainant's pay with Respondent.

For a period of time immediately following her discharge, Complainant was unable to work due to a medical problem. She had applied for medical leave for that time. In addition, there was testimony that she could not return to work until approximately August 30, 1999. She could not establish that she would have been paid for that period if she had remained employed. Therefore, she should not be compensated for that time in the backpay award. As a result, backpay liability should begin to run after the end of August of 1999.

At \$2,400.00 per month, she would have earned \$9,600.00 by

the end of 1999. She would have earned \$28,800.00 in 2000 and \$22,800.00 during the first nine a half months of 2001 (the time from the start of the year through the date of the damages hearing). Thus, if she had remained with Respondent, she would have earned a total of \$54,000.00.

Complainant found a new job at the beginning of 2000. She testified that she was paid \$19,000.00 per year in the new job, so that figure should accurately represent her earnings for that year. She was earning \$1,672.00 per month during 2001, so her earnings through the damages hearing (9 1/2 months) should have been \$15,884.00. Her interim earnings, then, total \$34,884.00. Subtracting her interim earnings from what she should have earned leaves a total backpay amount of \$19,116.00. That is the recommended backpay award.

In addition, there is an issue regarding an annuity for which Complainant would have been eligible if she had remained with Respondent. She testified that, if she had not been discharged, that annuity would have vested within a matter of days. The cash surrender value of that annuity is \$4,247.61. That value should be awarded to her.

Because of the delay in her receipt of her backpay and the value of the annuity, prejudgment interest on those amounts is necessary to make Complainant whole. Such interest is recommended.

Complainant also is requesting compensation for emotional

distress suffered as a result of her discharge. Respondent correctly noted that the Commission presumes that recovery of pecuniary losses is generally enough to compensate a complainant for any emotional distress. See ***Smith and Cook County Sheriff's Office***, 19 Ill. HRC Rep. 131 (1985). In the instant case, though, Complainant's emotional damages are more severe than that usually suffered by those who experience unlawful discrimination. Complainant testified that she was sufficiently upset that it affected her daily life and her marriage. More tellingly, she testified that she was so upset that she did not leave her house for months. Not leaving the house for months is evidence of very severe emotional distress and such distress justifies a monetary award. Complainant suggests an award of \$15,000.00. That suggestion is really quite modest. However, in light of the absence of medical testimony and the fact that the amount in question was Complainant's own suggestion, the \$15,000.00 figure is recommended.

Along with monetary awards, Complainant is entitled to relief in other areas. Respondent should be ordered to clear Complainant's personnel records of references to this case. Furthermore, Respondent should be ordered to cease and desist from further discrimination on the basis of handicap.

Finally, Complainant is entitled to an award of the attorney's fees incurred in prosecuting this matter. By its failure to file any objection to Complainant's fee petition,

Respondent has waived the issue of such fees. **Mazzamuro and Titan Security, Ltd.**, \_\_\_ Ill. HRC Rep. \_\_\_, (1989CN3464, October 21, 1991). However, even if a response had been filed, the requested fees would be found to be reasonable.

Complainant has requested compensation for the work of attorney Gregory E. Kulis at the rate of \$200.00 per hour for 13.6 hours. She also has requested compensation for the work of attorney Kathleen Coyne Ropka at the rate of \$175.00 per hour for 4.3 hours. Those requests total \$3,472.50. That is the recommended fee award.

#### RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

A. That Respondent pay to Complainant the sum of \$19,116.00 for lost backpay through the date of the damages hearing;

B. That Respondent pay to Complainant the sum of \$4,247.61 as compensation for the lost value of the annuity she would have had if she had not been discharged;

C. That Respondent pay to Complainant prejudgment interest on the backpay award and the value of the lost annuity, such interest to be calculated as set forth in 56 Ill. Admin. Code, Section 5300.1145;

D. That Respondent pay to Complainant the sum of \$15,000.00 as compensation for the emotional distress suffered by



Complainant as a result of Respondent's actions;

E. That Respondent pay to Complainant the sum of \$3,472.50 for attorney's fees reasonably incurred in the prosecution of this matter;

F. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

G. That Respondent be ordered to cease and desist from further unlawful discrimination on the basis of mental handicap.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: August 30, 2002